

NATIONAL CITY POLICE DEPARTMENT

Policies & Statutes relating to #8CantWait Campaign

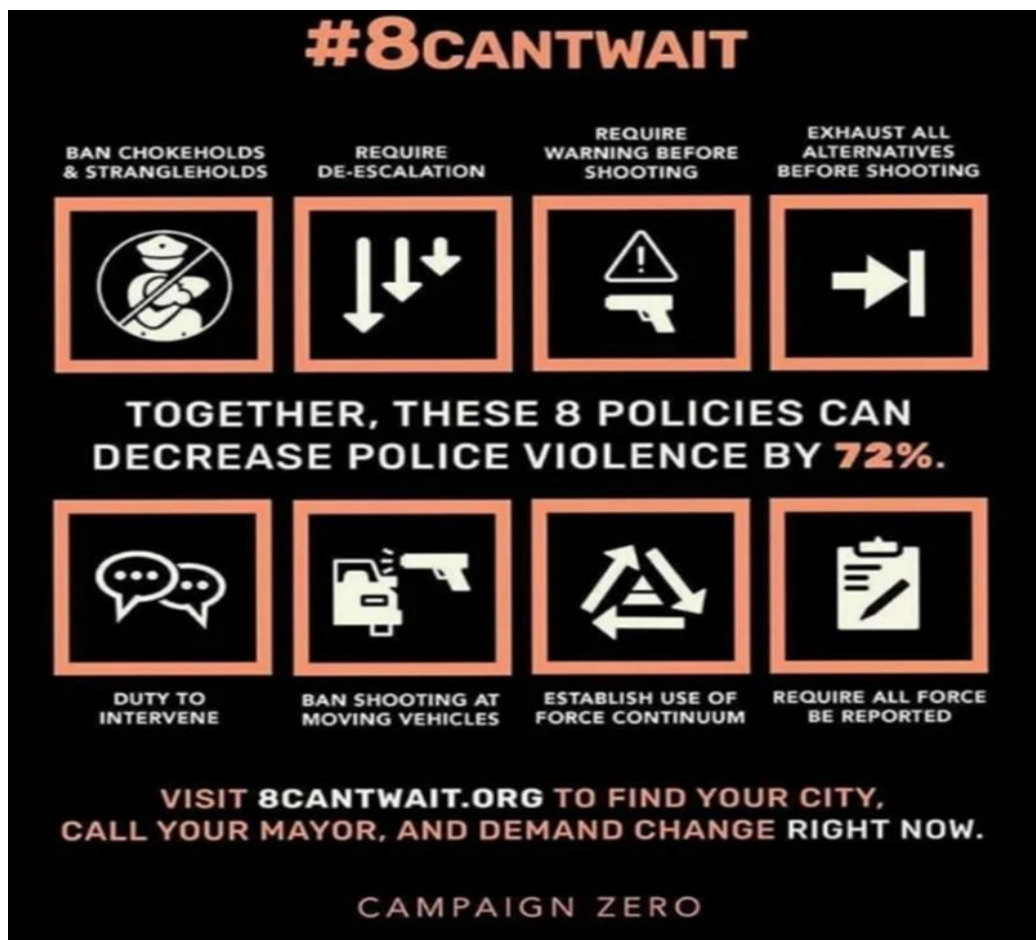
Campaign Zero's #8CantWait is a national campaign that recommends police departments across the country adopt policies and procedures aimed to reduce police shootings and excessive force.

During the past four years, the National City Police Department has conducted a comprehensive update of all department policies and procedures. Appropriately, we adopted current legislative statute requirements and policies in an effort to integrate professional best practices. These policies correspond to the #8CantWait Campaign recommendations in the following areas of policing: chokeholds and strangleholds, de-escalation, verbal warnings, exhausting all alternatives before using deadly force, duty by officers to intervene, shooting at moving vehicles, use of force continuum, and use of force reporting. In addition the National City Police Department requires officers to receive training in de-escalation, crisis intervention, and scenario based training. The training is designed to develop additional skills and abilities to effectively communicate with the public and de-escalate potential violent situations.

The following highlights the recommendations regarding the #8CantWait campaign and provides information to the corresponding National City Police Department policies.

All police department policies and procedures are available on our website:

<https://www.nationalcityca.gov/government/police>



1. Ban Chokehold and Strangleholds

Chokehold and strangleholds are not taught or authorized as an arrest and control tactic; chokeholds and strangleholds are not the carotid hold.

On June 4, 2020, the National City Police Department issued a department order to discontinue the use of the carotid hold as a less lethal force option and removed the corresponding section from policy (300 – Use of Force Policy).

2. Require De-escalation

Policy addresses the use of de-escalation and crisis intervention strategies.

Adoption of the San Diego Countywide Crisis Management Philosophy regarding de-escalation.

300.3.5 Alternative tactics de-escalation

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- a. Summoning additional resources that are able to respond in a reasonably timely manner.
- b. Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- c. Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)(1)). Such alternatives may include but are not limited to:

- a. Attempts to de-escalate a situation.
- b. If reasonably available, the use of crisis intervention techniques by properly trained personnel.

SB230 requires officers to be trained in and utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.

409 – Crisis Intervention

Section 409.6 De-escalation

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice or use threats to obtain compliance.

3. Require Warning Before Shooting

As a result of legislative change, AB392 amended California Penal Code Section 835a which regulates the use of force by peace officers in California. The changes are reflected in National City Police Department policies.

300 – Use of Force Policy

Section 300.4 – Deadly Force Applications

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.

(b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

4. Exhaust All Other Means Before Shooting

300 – Use of Force Policy

Section 300.3 – Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

Section 300.4 – Deadly Force Applications

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force.

As a result of legislative change, AB392 amended California Penal Code Section 835a which regulates the use of force by peace officers in California. The changes are reflected in National City Police policies. (See Item 3)

5. Duty to Intervene

300 – Use of Force Policy

Section 300.2.1 Duty to Intercede

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor (Government code 7286(b)).

319– Standards of Conduct Policy

Section 319.5.9 Conduct

- a. Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.
- b. Unreasonable and unwarranted force to a person encountered or a person under arrest.
- c. Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- d. Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.

6. Ban Shooting at Moving Vehicles

300 – Use of Force Policy

Section 300.4.1 Shooting at or from Moving Vehicle

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

Section 300.4: Deadly Force Applications

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- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
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officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

7. Establish Use of Force Continuum

300 – Use of Force Policy

Section 300.3 – Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

Section 300.3.2 – Factors Used to Determine the Reasonableness of Force

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- a. The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- c. Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- d. The conduct of the involved officer (Penal Code § 835a).
- e. The effects of drugs or alcohol.
- f. The individual's apparent mental state or capacity (Penal Code § 835a).
- g. The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- h. Proximity of weapons or dangerous improvised devices.
- i. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- j. The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- k. Seriousness of the suspected offense or reason for contact with the individual.
- l. Training and experience of the officer.
- m. Potential for injury to officers, suspects, and others.
- n. Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- o. The risk and reasonably foreseeable consequences of escape.

- p. The apparent need for immediate control of the subject or a prompt resolution of the situation.
- q. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- r. Prior contacts with the subject or awareness of any propensity for violence.
- s. Any other exigent circumstances.

Section 300.3.3 – Pain Compliance Techniques

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- a. The degree to which the application of the technique may be controlled given the level of resistance.
- b. Whether the person can comply with the direction or orders of the officer.
- c. Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

Section 300.4 – Deadly Force Applications

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force.

8. Require All Force Be Reported

300 – Use of Force Policy

Section 300.5 – Reporting the Use of Force

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

Section 300.5.1 – Notification to Supervisors

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- a. The application caused a visible injury.
- b. The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.

- c. The individual subjected to the force complained of injury or continuing pain.
- d. The individual indicates intent to pursue litigation.
- e. Any application of a EMDT or control device.
- f. Any application of a restraint device other than handcuffs, shackles or belly chains.
- g. The individual subjected to the force was rendered unconscious.
- h. An individual was struck or kicked.
- i. An individual alleges any of the above has occurred.

References:

California Penal Code 835a.

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

Assembly Bill 392

AB 392 is legislation that changed the circumstances of justifiable use of lethal force by a peace officer. The changes consisted primarily of the following:

- Sanctity of every human life

- Force when necessary in defense of human life
- The perspective of a reasonable officer
- The person's disability may affect their ability to understand or comply
- Objectively reasonable force
- Person does not pose an imminent threat of death or serious bodily injury
- Tactical repositioning or other de-escalation tactics

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392

Senate Bill 230

SB230 is legislation that requires all police departments to meet policy standards regarding the use of force. The changes consisted primarily of the following:

- Utilizing de-escalation techniques and other alternatives to force when feasible
- Specific guidelines for the application of deadly force.
- Obligation for an officer to intercede when observing another officer using force that is clearly beyond that which necessary
- Training standards and use of force reporting mandates

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB230